IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

Crl.MC.No. 1203 of 2007()

CC.338/2006 of JUDL.MAGISTRATE OF FIRST CLASS, KAYAMKULAM

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PETITIONER:

AVINASH, S/O.THAMPAN, PADMADEVA NIVAS,
KOYIPALLIKARAZHMA MURI, PERINGALA
VILLAGE, OLAKETTIYAMBALAM FROM KUYILAMPARAMBIL,
KOYIPALLIKARAZHMA MURI,
PERINGALA VILLAGE, OLAKETTIYAMBALAM.

BY ADV. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SMT.KAVITHA GANGADHARAN

RESPONDENTS-STATE & COMPLAINANT:

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1. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31.

2. SUB INSPECTOR OF POLICE, KAYAMKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.1203 of 2007

Dated this the 13th day of April 2007

O R D E R

The petitioner faces indictment for offences punishable interalia under Section 326 read with 149 I.P.C. Altogether there were nineteen accused persons. The petitioner is the seventeenth accused. The petitioner was not available for trial. The trial against the co-accused was proceeded with. Crucial witnesses examined before court in the trial against the co-accused turned hostile to the prosecution. Consequently, the learned Magistrate found such accused not guilty and acquitted them. The petitioner did not stand trial and has shown as absconding. The case against him has been split up. The petitioner has now come to this court with this petition under Section 482 Cr.P.C to quash the proceedings which is surviving against him.

2. What is the reason? Except that the co-accused have already been acquitted and that the witnesses who were examined in the course of the trial turned hostile and did not

support the prosecution case, no other contentions are raised. The mere acquittal of the co-accused is, by itself, no reason to justify the prayer of the absconding co-accused to quash the proceedings against him. This position has been clarified in the decision of the Full Bench in Moosa vs. Sub Inspector of Police [2006(1) KLT 552 (FB)].

3. I have looked into the factual situation also. One of the injured persons was not available for trial when the co-accused stood trial. May be the co-accused are entitled for the advantage of the failure of the prosecution to produce such witness. Certainly, the absconding co-accused cannot claim any benefit or advantage from that circumstance. In these circumstances, the prayer cannot obviously be entertained. The petition has to fail.

4. The learned counsel for the petitioner submits that the victims have compounded the offence. They shall report such composition to the learned Magistrate. Some of the offences alleged are non-compoundable. The petitioner wants an opportunity to be given to him to urge before the learned Magistrate that the charges are not liable to be framed for the

non-compoundable offences and that the composition of the compoundable offences deserves to be accepted in which event, the petitioner can claim premature termination of the proceedings. It is certainly for the petitioner to appear before the learned Magistrate and urge this contention at the stage of framing charge. If the learned Magistrate is satisfied that charges need not at all be framed for any non-compoundable offence, certainly the prayer for composition can also be considered by the learned Magistrate.

5. The learned counsel for the petitioner submits that the petitioner who is employed abroad has now come on leave and has to return on 12/5/2007. If the plea regarding framing of charges is considered by the learned Magistrate before 12/5/2007, that will be of great assistance to the petitioner, it is urged. I need only mention that it is for the petitioner to appear before the learned Magistrate and make that request. The learned Magistrate must certainly consider that request on merits and pass appropriate orders.

6. Finally, it is prayed that the petitioner apprehends that his application for bail may not be considered by the learned

Magistrate on the date of surrender itself. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs.Deputy Superintendent of Police [2003(1)KLT 339].

7. In the result, this Criminal Miscellaneous Case is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF APRIL 2007